

**CERTIFICATION OF PERSONNEL BOARD RECORDS**

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **MATT T. TRUE VS. KENTUCKY TRANSPORTATION CABINET (APPEAL NO. 2015-175)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 19<sup>th</sup> day of May, 2016.

  
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**MARK A. SIPEK, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-175

MATT T. TRUE

APPELLANT

VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

KENTUCKY TRANSPORTATION CABINET

APPELLEE

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The Board, at its regular May 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 5, 2016, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 19<sup>th</sup> day of May, 2016.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle  
Mr. Matt T. True  
Mr. J. R. Dobner

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-175

MATT TRUE

APPELLANT

VS.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

TRANSPORTATION CABINET

APPELLEE

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This matter came on for an evidentiary hearing on February 24, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Matt True, was present and not represented by legal counsel. Appellee, Transportation Cabinet, was present and represented by the Hon. William H. Fogle. Appearing as Agency Representative was Eddie Bowman.

This matter involves a 15-day suspension given the Appellant by letter dated May 28, 2015. Attached hereto as **Recommended Order Attachment A**. This suspension involves the Appellant's alleged lack of good behavior on Friday March 13, 2015. In summary, the Appellant supposedly failed to report to work as scheduled, failed to carry out assignments as directed by his supervisor, and failed to comply with leave procedures established by his supervisor.

The Appellee was assigned the burden of proof, which is by a preponderance of the evidence, to demonstrate just cause for the suspension.

**BACKGROUND**

1. Appellee's first witness was **J. R. Dobner**. He is an Executive Advisor for the Cabinet within the office of Human Resource Management. At the time this letter was issued, he was one of several designated Appointing Authorities. He testified that he reviewed this letter, but it was actually signed by another Appointing Authority, Carol Beth Martin.

2. On the day in question, the witness testified that the Appellant was a Heavy Equipment Operator IV (HEO IV) on the Fayette County maintenance crew. He also testified that the Appellant later resigned sometime in 2015.

3. The witness introduced Appellee's Exhibit 1, an exhibit consisting of several documents, including a request for major disciplinary action initiated by the Appellants supervisors, Kelly Baker and Cory Wilson. Contained within this exhibit is a document entitled "Leave Requesting and Reporting Procedures – Fayette County Maintenance Facility." In pertinent part the leave procedure states as follows:

To report unplanned, unexpected or urgent leave (tardiness, emergency sick, annual or compensatory leave, adverse weather leave, etc.) you as the employee are required to communicate such with your supervisor, Eddie Bowman at (859) 475-2124, by the start of your daily work schedule, which begins at 7:30 a.m.

*For example, if you are scheduled to start work at 7:30 a.m., then you shall call in no later than 7:30 a.m. each day you need to request unplanned, unexpected, or urgent leave.*

4. The witness then explained that it had been related to him that the Appellant had left a message for Bowman stating that he would be late because he was donating blood that day at the District office. He went on to explain that he was told the Appellant appeared at the maintenance barn at 7:42 a.m. and went out with the crew at 8:15 a.m. to begin potholing. The witness was further informed that after the crew began their duties, it began to rain, whereupon the crew returned to the maintenance barn and, after a period of time, again went back at approximately 11:30 a.m. to continue potholing, and then the project was eventually stopped at 12:19 p.m. because of heavy rain.

5. In essence, the witness explained that the Appellant was suspended for failure to call in or request leave properly. A part of this reasoning involved the Appellant's failure to seek prior approval for donating blood. Such a donation results in an employee receiving four hours off for that donation. The other part of Appellant's failure to request leave properly was not calling prior to 7:30 a.m. and speaking to supervisor Bowman.

6. The witness then introduced Appellee's Exhibit 4, the General Administration and Personnel Policy (GAP) involving Employee Conduct. This policy provides in pertinent part that the Agency attempts to ensure that the work of the Cabinet is efficiently and effectively accomplished by:

- Reporting for work, leaving work, and taking breaks as scheduled.

- Carrying out assignments as directed by their supervisors or requesting meetings with their supervisors to seek further direction or to discuss problems with the assignments.
- Complying with leave procedures as established by both the Cabinet and the employee's supervisor.

7. Mr. Bowman testified that the 15-day suspension was issued after a review of the Appellant's personnel file, his evaluations, and previous disciplinary actions. These previous disciplinary actions involved four suspensions dated: August 22, 2000, for three days; October 18, 2007, for three days; March 4, 2009 for four days; and February 6, 2015, for ten days.

8. Three of these four suspensions involved relatively minor instances of lack of good behavior.

9. On cross-examination, the witness confirmed that subsequent to the suspension at issue here, on the day the Appellant resigned, he told this witness and another Personnel person, Kathy Marshall, if they had done their job and had investigated the Fayette County barn operations, he wouldn't have had to resign. He then asked this witness to investigate the Fayette County barn.

10. The Appellee's next witness was **Eddie Bowman**. He has been a Highway Superintendent II in Fayette County since November 2014. He previously was an HEO IV, and a colleague of the Appellant. At the time of the actions herein, he was the Appellant's supervisor.

11. The witness explained that as Foreman of the maintenance barn, his duties involved planning the crew's duties, which included; snow and ice removal, ditching, and pothole patching. He further added that he had had no issues with the Appellant previously and termed him "an excellent operator."

12. Bowman testified that on March 15, 2015, he was sending out a maintenance crew to repair potholes after a major snow storm. He explained that he got a message on the answering machine at the office after 7:30 a.m., from the Appellant, explaining that he would be arriving late because he was donating blood. He then went on to state that once the Appellant arrived, he then presented a leave request form to get four hours off. This witness explained, because the Appellant arrived late, it caused the crew to be delayed leaving the barn to begin potholing.

13. The witness went on to testify that sometime later, after it had begun to rain, the Appellant returned to the barn bringing the rest of the crew with him. Apparently there was a

discussion at that point between the Appellant and this witness as to whether the potholing should continue in the rain and as to whether the Appellant would be able to take his four hours off for blood donation.

14. At one point, apparently another member of the crew (Weaver) became irate, this witness then called Supervisor Cory Wilson to the barn for a discussion. After this discussion, which lasted approximately one hour, the crew then returned to the field to continue the potholing. However, after another heavy rain, the crew returned for good and the Appellant was granted two hours of leave because of the blood donation.

15. This witness also confirmed the Appellant had taken the lead in calming Mr. Weaver, who apparently was upset because he thought Bowman had changed the instructions regarding having to continue potholing.

16. The Appellee's next witness was **Cory Wilson**. He has been the Engineering Supervisor over Section 7, at the Lexington office, for approximately one year. His duties include supervising the staff, which includes; Engineers, Construction Specialists, and the maintenance supervisor, Eddie Bowman, in the Fayette County barn.

17. He testified that on March 15, 2015, he was called to the maintenance barn by Bowman, who stated he was having a problem with the Appellant and Mr. Weaver. He explained that upon arriving at the maintenance barn Mr. Weaver was yelling about a change in instructions. He then met with both Mr. Weaver and Appellant, and stated that he informed the Appellant of his need to follow the leave procedures. He explained that the Appellant should have requested in advance leave time for giving blood. He also added that Mr. Weaver was not disciplined, but later resigned.

18. On cross-examination, the witness admitted that at the conclusion of his meeting with the Appellant that day, he did tell him that as far as he was concerned, the issue was over. He then denied having told supervisor Bowman to write up Appellant so that they could attempt to terminate his position. The Cabinet then closed.

19. The Appellant, **Matt True**, called himself as his only witness. He testified that he had worked for the Transportation Cabinet in excess of 14 years as an HEO IV. Subsequent to this latest suspension, he resigned in 2015.

20. He explained that on the day in question, he donated blood just as he had always done in the previous nine years, including time when Bowman worked with him, both as a colleague and as a supervisor. He also stated that he had told Bowman at the beginning of the week to remember that Friday was going to be blood donation day and that he was going to donate blood.

21. Appellant testified that earlier that morning, he had called the office landline rather than Bowman's cell phone. He left a message after no one answered the phone, stating that he would be slightly delayed because of the blood donation. Regarding the rest of the day's events, he testified that he arrived at the maintenance barn at 7:42 a.m. (12 minutes late) and that the hot box was not filled and the signs were not ready, therefore causing a slight delay in the crew leaving to begin their potholing. He denied that his late arrival caused any delay.

22. Appellant testified that upon requesting of Bowman that he be approved four hours leave that afternoon, he was told that it would not be approved and the potholing operation was stopped due to the rain. The crew then left to begin their duties at approximately 8:15 a.m. and at approximately 10:30 a.m. the Appellant and the rest of the crew returned to the barn because it had begun raining. The Appellant felt at that point he would be able to utilize his leave since he assumed the potholing would cease for the rest of the day. However, he testified that Bowman informed him that they would need to continue the potholing and after supervisor Wilson had been called and a discussion ensued, the crew was then sent out again to begin potholing. At approximately 12:19 p.m., the potholing was stopped for the day because of the heavy rain fall. The Appellant was then allowed to take two hours of the requested four-hour leave time.

23. Regarding his involvement in the alleged hostile environment cited by Bowman, the witness explained that it was Mr. Weaver who became irate and actually caused Mr. Wilson to be called to the barn. He again stated that he was the one who had calmed Mr. Weaver and followed Mr. Bowman's directives to go out the second time to continue potholing. The Appellant then closed.

### **FINDINGS OF FACTS**

1. On Friday March 13, 2015, the Appellant called the maintenance barn in Fayette County on its landline, rather than Supervisor Bowman's cell phone to inform him by voice mail that he would be slightly delayed. He arrived 12 minutes late after having donated blood. The actions were harmless. Bowman did not deny receipt of the message.

2. The Appellant informed Bowman on Monday of the same week that he would be donating blood on Friday.

3. The Appellant's 12-minute tardiness was not the cause of any delay in beginning the potholing work of the crew.

4. Any miscommunication between Bowman and the Appellant appears to have arisen because of the uncertainty of whether, and for how long, the crew would be performing potholing repairs in the rain.

5. The Appellant did not fail to follow Bowman's directions regarding the pothole repairs. Indeed, he went out when the work began, and after returning to the maintenance barn due to heavy rain, he went back out a second time before rain halted work for the day shortly after noon.

6. Any hostile environment existing on the day in question was most likely caused by Mr. Weaver's demeanor because of how he felt toward Bowman's changing directions regarding whether the potholing duties would continue in the rain.

#### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law the Agency failed to carry its burden of proof by a preponderance of the evidence to show the Appellant failed to report to work as scheduled, failed to carry out assignments as scheduled, and failed to carry out established leave procedures.

#### **RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusion of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **MATT TRUE VS. TRANSPORTATION CABINET (APPEAL NO. 2015-175)** be **SUSTAINED** and that the **15-day suspension be rescinded and expunged from his record, that he be awarded back pay, and other benefits to which he is entitled for the 15-day suspension which are being restored to him, and that he otherwise be made whole. KRS 18A.105, and 200 KAR 12:030.**

#### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not



specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Hanson Williams** this 5<sup>th</sup> day of April, 2016.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Fogle  
Mr. Matt True  
J. R. Dobner



TRANSPORTATION CABINET

Frankfort, Kentucky 40622  
www.transportation.ky.gov/

Steven L. Beshear  
Governor

Michael W. Hancock, P.E.  
Secretary

May 28, 2015

Matthew True  
[REDACTED]  
[REDACTED]

Re: Fifteen (15) Day Suspension

Personnel Number: [REDACTED]

Dear Mr. True:

In a letter dated May 13, 2015, you were advised that the Kentucky Transportation Cabinet (KYTC) intended to suspend you for fifteen (15) days from your position as a Highway Equipment Operator IV with the KYTC, Department of Highways, District Seven. After having considered your handwritten response submitted to the State Highway Engineer's Office on May 22, 2015, I have decided to proceed with the fifteen (15) day suspension. The suspension will start at the beginning of business on Monday, June 1, 2015, and continue through the close of business Friday, June 19, 2015. You are to report to work at your regular start time on Monday, June 22, 2015. In accordance with KRS 18A.095 and 101 KAR 1:345, cause exists for your suspension based on the following specific reasons:

**Lack of Good Behavior.** On Friday, March 13, 2015, Eddie Bowman, Highway Superintendent II, intended to assign the Fayette County maintenance crew to fix potholes. The major snowstorm on Thursday, March 6, 2015 caused many potholes on Fayette County roads that needed to be filled.

When Bowman arrived at the Fayette County maintenance facility, he discovered a message from you on the facility's answering machine. In the message, you informed Bowman that you would be reporting to the District Office that morning to donate blood. Bowman did not receive your message until approximately 7:39 a.m., which is after your regularly scheduled start time of 7:30 a.m. According to the Leave Request and Reporting Procedures that you signed and acknowledged on January 29, 2015, you are to submit an Application for Leave form in

Recommended Order  
Attachment A



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APPELLEE'S  
EXHIBIT

advance to request planned leave, and you are to call Bowman on his cell phone prior to the start of your workday to report unplanned leave. You did neither when requesting blood donation leave on March 13, 2015.

You arrived at the Fayette County maintenance facility shortly before 8:15 a.m., and you submitted an Application for Leave form to Bowman requesting to be off work that afternoon. Bowman informed you that due to the emergency nature of the pothole repairs, you would not be approved to leave that afternoon unless it rained and the potholing operation was stopped due to rain. Shortly after 8:15 a.m., you departed the facility with the crew to perform potholing operations.

At approximately 10:30 a.m., you returned to the facility with the crew because it had started raining. Upon your return, you informed Bowman that you would use your blood donation leave beginning at 12:00 p.m. Bowman explained to you that he would not approve the leave due to the emergency nature of the pothole repairs, and that the weather was still good enough at that time to continue with the operations.

At approximately 10:40 a.m., Bowman contacted Cory Wilson, Transportation Engineer Supervisor, and asked Wilson to come to the Fayette County maintenance facility. When Wilson arrived, Bowman filled him in on the situation, and then Bowman and Wilson discussed the matter with you. You explained that you returned to the facility because Bowman had told you that you could leave if it started raining. Bowman disputed your account and stated that he told you that you could leave if the rain was heavy enough to stop the potholing operations for that day. Your conversation with Bowman and Wilson lasted approximately one hour. At the conclusion of the conversation, the crew left the facility and returned to the potholing operations. At approximately 12:19 p.m., Bowman contacted Wilson via text message and informed him that the crew had to cease potholing operations due to the increasingly heavy rainfall. You were then permitted to utilize your blood donation leave that afternoon.

Your actions were in violation of General Administration and Personnel Policy GAP-801, General Conduct, because you failed to report to work as scheduled, failed to carry out assignments as directed by your supervisor, and failed to comply with the leave procedures established by Bowman. By donating blood without prior permission, you were late reporting to the maintenance facility and delayed the crew from beginning potholing operations that morning. By returning to the facility when it started raining, but not enough rain to actually cancel the

Matthew True  
May 28, 2015  
Page 3 of 3

operation, you spent over 1 hour in the maintenance facility when the crew could have been still performing potholing operations. Due to your actions, the crew was unable to fix as many potholes on March 13, 2015 as it could have had the crew been working on the operation from 7:30 a.m. until the rain stopped the operation at around 12:00 p.m.

You previously received the following disciplinary action(s):

<u>DATE</u>	<u>ACTION</u>	<u>REASON</u>
February 6, 2015	10 Day Suspension	Lack of Good Behavior
March 4, 2009	4 Day Suspension	Lack of Good Behavior
October 18, 2007	3 Day Suspension	Lack of Good Behavior
August 22, 2000	3 Day Suspension	Lack of Good Behavior

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at 1-800-445-5327 or (502) 564-5788.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are enclosed.

Sincerely,



Carol Beth Martin  
Appointing Authority

CBM/jrd

Attachments

cc: Personnel Board  
Personnel Cabinet  
Steve Waddle, State Highway Engineer  
Kelly Baker, Executive Director  
John Graves, Administrative Coordinator  
Agency Personnel File